

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE

House Bill 526 (Delegate Zirkin, *et al.*)
 Judiciary

State Police - Facility Security

This bill establishes various provisions relating to facilities where hazardous material is stored, dispensed, used, or handled, and establishes a Task Force on the Security of Hazardous Materials.

Fiscal Summary

State Effect: General fund expenditures would increase by \$211,800 in FY 2005. Out-year costs reflect annualization and inflation. The civil penalty provisions of the bill are not expected to significantly affect State finances or operations. Any expense reimbursements for task force members and staffing costs for the State Police are assumed to be minimal and absorbable within existing budgeted resources.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
GF Revenue	-	-	-	-	-
GF Expenditure	211,800	188,900	199,200	256,900	221,900
Net Effect	(\$211,800)	(\$188,900)	(\$199,200)	(\$256,900)	(\$221,900)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local jurisdictions that own and operate certain facilities will become subject to regulation and could incur a significant increase in costs related to the implementation of safety measures. **This bill imposes a mandate on a unit of local government.** Baltimore City’s current ordinance relating to hazardous materials inspections may exempt the city from the provisions of this bill. The civil penalty provisions of this bill are not expected to significantly affect local finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: This bill requires owners, lessees, and operators of facilities where hazardous material is stored, dispensed, used, or handled to maintain, store, and handle all hazardous material in a reasonably secure and prudent manner in order to prevent exposure or other danger. Such persons must analyze and implement safety measures at least every three years, beginning by January 1, 2006, in consultation with the Maryland Emergency Management Agency and with the appropriate local organizations for emergency management. The bill provides for the confidentiality of such analyses.

The bill requires such persons to inform the Department of State Police, local governments, and appropriate State and local emergency response units of any measures taken or planned to implement these provisions. The bill requires such persons to prohibit unauthorized access to the facility property, monitor the property, the facility, and the means of access, and safeguard the property with protective measures.

The State Police must approve a national industry security code or set of standards for compliance, if specified requirements of such a code or set of standards is met. The bill provides for the circumstances under which a person is deemed to be in compliance. The bill's provisions do not apply to local jurisdictions that adopt standards at least as stringent as those required under the bill and work in consultation with the State Police in regard to security measures. By January 1, 2005, the State Police are required to adopt implementary regulations.

The bill provides for the following maximum civil penalties if a person knowingly fails to maintain, store, and handle all hazardous material in a reasonably secure and prudent manner or fails to obey the applicable regulations: (1) for a first violation, \$5,000; and (2) for a subsequent violation, \$10,000. Each day that a violation continues is a separate violation.

The bill also establishes a 23-member Task Force on the Security of Hazardous Materials to make recommendations regarding hazardous materials security at rail lines, rail yards, and other storage facilities and transportation routes. The State Police are required to provide staffing to the task force. The task force is required to report its recommendations to the Governor and the General Assembly by December 15, 2004.

The bill's provisions are severable.

Current Law: Neither federal nor State law explicitly require that chemical facilities assess chemical security and take security actions to safeguard the facilities from attack. However, a number of federal laws impose safety requirements on facilities that may help increase the security of those facilities.

The U.S. Department of Labor's Occupational Safety and Health Administration operates a program relating to process safety management. The program, which is intended to prevent or minimize the consequences of a catastrophic release of toxic, reactive, flammable, or explosive highly hazardous chemicals from a process, involves hazard analysis and the development of process safety and emergency management plans. The Maryland Occupational Safety and Health Program within the Department of Labor, Licensing, and Regulation is involved with the implementation of process safety management standards at the State level.

Under the federal Clean Air Act, specified chemical sources must prepare risk management plans and submit them to the U.S. Environmental Protection Agency (EPA). The federal law contains a general duty for owners and operators of facilities producing, using, handling, or storing extremely hazardous substances to design and maintain a safe facility to prevent accidental releases and to minimize the consequences of any releases that occur. The Maryland Department of the Environment (MDE) does not have delegated authority of the federal program and therefore does not evaluate risk management plans.

Generally, a person may not store, discharge, treat, or dispose of a controlled hazardous substance in this State except in a controlled hazardous substance facility and in accordance with law. A person must hold a facility permit before the person may own, establish, operate, or maintain a controlled hazardous substance facility in the State. With specified exceptions, a person may not transport any controlled hazardous substance from any source in this State or to any controlled hazardous substance facility unless the person holds a hauler certificate, a vehicle certificate, and a driver certificate.

Currently, facilities that manufacture, store, and use hazardous or toxic chemicals and that are subject to the federal Emergency Planning and Community Right-to-Know Act must report certain information regarding these substances to MDE. Those facilities must pay a fee which is deposited into the Community Right-to-Know Fund. MDE administers the fund.

Background: According to MDE, a 2003 report on homeland security by the U.S. General Accounting Office (GAO) found that chemical facilities may be attractive targets for terrorists. Many facilities exist in populated areas where a chemical release could threaten thousands. EPA reports that 123 chemical facilities located throughout the nation have toxic "worst-case" scenarios where more than a million people in the surrounding area could be at risk if a release occurred. While GAO believes that the chemical industry has undertaken a number of voluntary initiatives to address security at facilities, to date, no one has comprehensively assessed the chemical industry's

vulnerabilities. The GAO report asserts that no agency monitors or documents the extent to which chemical facilities have implemented security measures.

The State Police currently have regulatory authority over firearms (including firearms dealer licensing, machine gun registrations, handgun permits, handgun instructor certification, handgun collector permits, and gun safety); private detective registration; private detective agency licensing; security guard certifications; security guard agency licensing; security systems agency licensing; security systems technicians, sales persons, and monitors; special police registrations; outdoor music festivals private property permits; K-9 registrations; railroad police commission; public fireworks display permits; explosives dealer licensing; fireworks shooter licensing; smoke detector sales/use approvals; fire extinguisher repair licensing; and explosives blaster licensing (a program under development).

In October 2002, Baltimore City enacted a hazardous materials ordinance with provisions similar to those provided under this bill. Implementation and enforcement responsibilities under the ordinance were given to the city fire department. MDE advises that Baltimore City and other states, such as New Jersey and Delaware, have programs addressing chemical security and preparedness. MDE reports that, as of November 2003, approximately 131 facilities were required to report risk management programs to EPA. Of these, 27 are located in Baltimore City and would, therefore, likely be exempt from the bill. Accordingly, the bill would likely apply to an estimated 104 facilities in the State.

State Expenditures: For the State Police, general fund expenditures could increase by an estimated \$170,818 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. This estimate reflects the cost of hiring two civilian compliance officers to provide an inspection and enforcement mechanism for the bill's provisions, including annual on-site inspections of all 104 facilities. It includes salaries, fringe benefits, one-time start-up costs (including automobiles and computers with appropriate software for tracking purposes), and ongoing operating expenses.

Salaries and Fringe Benefits	\$90,411
Purchase of Two Automobiles	45,090
Other One-time Start-up Costs	25,709
Other Operating Expenses	<u>9,608</u>
FY 2005 State Police Expenditures	\$170,818

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses with

replacement automobiles in fiscal 2008. Although the State Police believe that this bill also necessitates the hiring of a data device operator, the Department of Legislative Services notes that such a need was not expressed for the same bill in 2003 and is likely not warranted.

MDE currently has a Community Right-to-Know program. It is served by one full-time equivalent position. The program collects information from facilities that manufacture, use, or store certain hazardous materials and are required to report under the Federal Employee Protection and Community Right-to-Know Act.

This bill would require facilities to inform appropriate State and local response units of any measures taken or planned to be taken to implement the bill's requirements at the facility. MDE does not currently receive such information. Accordingly, for MDE, general fund expenditures could increase by an estimated \$40,939 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. This estimate reflects the cost of hiring one environmental specialist to collect, organize, analyze, and respond to information provided by affected facilities. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salary and Fringe Benefits	\$36,983
One-time Start-up Costs	2,730
Other Operating Expenses	<u>1,226</u>
FY 2005 MDE Expenditures	\$40,939

Total State expenditures associated with facility reporting, compliance, and enforcement for fiscal 2005, not including any costs associated with the bill's penalty provisions, is estimated to be \$211,757. In the out-years these costs would total \$188,910 for fiscal 2006, \$199,158 for fiscal 2007, \$ 256,923 for fiscal 2008, and \$221,893 for fiscal 2009.

Local Expenditures: Local governments that own and operate certain facilities (such as wastewater treatment plants that use chlorine) would incur increased costs to assess the security of their facilities and implement any required security measures if they do not adopt standards at least as stringent and does not work with the State Police in regard to security measures. Although a reliable estimate of any increase in costs to local jurisdictions cannot be made, it could be significant. Facilities violating the bill's provisions would be subject to enforcement actions.

Although the Baltimore City ordinance does not have the same reporting requirements as under this bill, the city believes the ordinance is at least as stringent as the requirements of the bill and that, therefore, Baltimore City would be exempt from the provisions of the

bill. However, it is also noted that some of the 104 covered facilities are public sector facilities (including wastewater treatment facilities using chlorine).

Small Business Effect: An unknown number of small businesses could become subject to the statutory requirements of this bill and to regulations adopted by the State. Any business, large or small, subject to the bill's requirements will have to analyze the security of their facilities, implement improvements, and submit reports relating to safety measures taken. In addition, businesses subject to the regulations will be required to prohibit unauthorized access to their properties and monitor their properties, facilities, and any adjoining rail lines or other means of access as provided by the bill. Accordingly, expenditures could increase significantly.

Additional Information

Prior Introductions: HB 796 of 2003, a similar bill, passed the House and received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Department of State Police, Montgomery County, Garrett County, Department of Legislative Services

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